

Questions and Responses

RFP 2003-39 DB2 Toolset Software

Evaluation Criteria and Weights Approved for RFP 2003-06: Will this be the same criteria/weights for RFP 2003-39? If yes, can the Commonwealth clarify what is meant by the following, "Where the proposed software falls within the technology life-cycle"? We would just like to make sure that this is covered sufficiently in our proposal back to the Commonwealth as it has a substantial 20% associated with it.

Response: The weights may be different for this RFP.

Section 3, General Background: It appears that since the last RFP 2003-06, the Commonwealth has removed its request for technical and cost requirements regarding Applications Development products? Why has the Commonwealth chosen to remove this previous requirement? Will the Commonwealth look to bid this on a separate RFP?

Response: The Commonwealth is not looking for Applications Development products at this time for DB2 Tools.

Section 4.8 Acceptance Test Plan: To what degree of detail is the Commonwealth requesting in regards to a "typical acceptance test plan" ?

Response: An outline is acceptable; however, you may go into detail.

Section 5.5 Installation & Delivery: a. "24/7 technical support during the installation period." Does this mean on-site support or telephone support?
b. In regards to additional features or options, should this include line item costs above and beyond those relating to the product installation that may be desired for the purpose of customization or implementation?

Response: Section 5 contain desirables. The Offeror may propose how your firm can deliver 24/7 technical support for installation and delivery. Unless there is no cost associated with these features they must be listed and appropriately marked with your firm's pricing information.

Section 5.8 Acceptance Test Plan - In regards to additional features or options, should this include line item costs above and beyond those relating to the product acceptance testing as defined in Section 4.8 "typical acceptance test plan"?

Response: Yes.

Section 5.9. Acceptance Testing: a. Does the 60 days only relate to the amount of time that the Commonwealth will have to evaluate or does this require the availability of staff to assist with acceptance testing for 60 days?

b. Same question as 5.8, are the "additional features or options" anything above the performance of the "typical acceptance test plan" specified in Section 4.8? If so, should this include line item costs for any effort above and beyond those relating to the product acceptance testing as defined in Section 4.8 "typical acceptance test plan"?

Response: The Commonwealth desires up to 60 days to accept the product. You may propose how your company can accommodate this request. Yes to b.

Questions concerning Mandatory Terms & Conditions:

7 Antitrust: What is intended by this Clause?

Commonwealth response:

Protection to the Commonwealth, should the Contractor be idle in its pursuit of legal action. SEE AMENDMENT #1. Because the above reference is now in the Desirable Terms and Conditions, the clause may be amended during negotiations.

7 Antitrust: - This is a protection afforded to our firm to protect our assets and proprietary information. Our firm is more than willing to allow the Commonwealth to join in any actions under this section. Would COV object in the Contractor taking the lead? Can we change the language to show that?

Commonwealth response:

See above response.

13 Assignment: Please address this clause as it pertains to the right to assign due to a corporate reorganization, or merger, or the transfer of all or substantially all of the Contractor's, and/or its parent's assets to a successor. In such circumstance, can Contractor have the right to assign without prior written permission?

Commonwealth response:

The clause states in part, "...To the fullest extent permitted by law, ..."

26 Purchase Option: In the second sentence, what is meant by "unit price identified in any executed Attachment?"

Commonwealth response:

In context, "...The purchase price shall be the lower of the unit cost identified in any executed Attachment or the Contractor's then current, published price..." Unit cost in any executed Attachment, which means in any Attachment that both parties have already agreed to in writing. This is a Master Agreement and an Order could be in the form of an Attachment, and when signed by both parties it would then be considered to be executed.

28 Term: The Software Licenses are perpetual. Can the agreement term be construed to include the period of continued usage of the Product(s)?

Commonwealth response:

The Commonwealth does not understand the question. However, the definition of perpetual is everlasting, or occurring continually, or continuous.

Are the one-year extensions for software maintenance support?

Commonwealth response:

Reference; Section 9, paragraph numbered 60, entitled Scope of Agreement; As it states in part, "This is a Master Agreement...". The Master Agreement (Agreement) has a Term as delineated in numbered paragraph 28, of 3 years. By definition, a Master Agreement is an agreement in place to facilitate further ordering. Any extensions of the Master Agreement would allow further ordering in the extended Term. Extensions of the Master Agreement are to facilitate further ordering. While the antithesis would be, once the Master Agreement expires, it expires only for new ordering; it remains in place until all orders are fulfilled, i.e., warranties and properly ordered maintenance services are fulfilled under the Agreement.

29 Delivery Date: Contractor has no control of Customer's readiness for testing. Can "ready for testing" be deleted?

Commonwealth response:

The clause does not concern itself with "Customer's readiness for testing". The clause states in part, "Contractor shall deliver all Products, ready for testing,...", meaning the Products are ready for testing, i.e., all components are delivered, all Products are in essence, whole and complete.

37 Term of License: OEM Commercial Terms do not allow for Customer to terminate at any time and do allow for OEM termination under specific circumstances. Is VA willing to move to commercial terms or GSA terms with regards to unilateral termination?

Commonwealth response:

The clause remains as written.

37 Term of License: What happens if the Commonwealth terminates the license?

Commonwealth response:

Reference: numbered paragraph 42, entitled Disposition of Software; the clause states in part, "...Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's terminations of the license...."

38 Software Upgrades: With regards to the charge for software upgrades when compared to the lowest price at which the Contractor has sold such upgrades, please confirm that this is based on comparable terms, conditions and quantities.

Commonwealth response:

Confirmed.

38 Software Upgrades: Based on comparable terms, conditions and quantities for a specific version upgrade, will DIT accept the lowest Customer price less DIT's applicable discount of record for the contract?

Commonwealth response:

Yes

39, Confidentiality: Our firm requests that the Commonwealth create an exception to the 3 years in regards to software. Can the sentence be changed to reflect the following, "for a period in which the vendor identifies such software as a trade secret"?

Commonwealth response:

The clause remains as written.

40, Commonwealth's Rights to Computer Software: (c) "The right to use such Software products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth; - Is there some clarification that the Commonwealth can provide here to include that the replacement machine be the same size / MIPS capacity? Our interpretation of this sentence is that our firm would be allowing the Commonwealth to use the software on more capacity than they are licensed for (free upgrades).

Commonwealth response:

The intent of (c) as it states in part, "...to which the machine(s) may be transferred...", whereby the machine(s) may be transferred to a new location, or more succinctly the machine(s) may be relocated from 110 S 7th Street, Richmond, VA, to a new physical location.

41 Software Warranty: The policy of the Original Equipment Manufacturer (OEM) for supporting new releases is to provide toleration support for third-party products (such as DB2) within 90 days of their general availability. The OEM also intends to exploit new capabilities contained in new versions, where appropriate, within 180 days after general availability of the third-party software. However, major architectural changes may take longer to tolerate and exploit, and other business or technical reasons may require a different release timeframe. Given this commercial policy, is it acceptable to replace non-conforming software products within five (5) calendar days of its availability?

Commonwealth response:

The Commonwealth is conducting a procurement for Software that meets business, technical, and contractual requirements. The vendor is supplying Software that purports to meet all those conditions. If the vendor's product does not meet those conditions then the vendor's responsiveness to this procurement would be in question. Because the vendor is supplying Products that meet all of the conditions, five calendar days after receipt, is exactly what the Commonwealth agrees to.

If the OEM does not offer Software Warranty of any stated duration, would procurement of Software maintenance suffice for the stated 12-month period?

Commonwealth response:

The Commonwealth is requiring a 12 month warranty; the vendor may provide warranty or maintenance or some combination for the 12 month period, and price accordingly by acknowledging that the price includes the 12 months of coverage. Any maintenance provided must meet the warranty conditions, so as to be seamless to the Commonwealth.

41, Software Warranty: Our firm does not have issue with providing the services listed under this section. However, if it is determined that the issue was not with our software (i.e. hardware, platform or third party software, Our firm feels that the Commonwealth should pay for any expenses incurred). Is there some clarification that the Commonwealth can provide here?

Commonwealth response:

If any problem is not with the vendor's proposed software, then the vendor should not incur any expenses.

43, Correction of Errors: What is the Commonwealth's expectation and scope in regards to "fixing" the product within (30) days?

Commonwealth response:

As the clause states in part, "...In the event Contractor does not keep the Software Products in specified operating condition in accordance with the Agreement, then the Commonwealth, at its sole option, shall have the right to return any or all of the software and related technical data and ..."

44 Principal Period of Maintenance: Principal Period of Maintenance is stated as 8:00 A.M. to 5:00 P.M. M-F EST. Please clarify that for the approximate 7 months of Eastern Daylight Time "EDT" applies.

Commonwealth response:

The Commonwealth's intent is that the Principal Period of Maintenance is from 8:00 a.m. to 5:00 p.m., Local Time. SEE AMENDMENT #1.

48 Maintenance Renewal: With regards to "the lowest price to any other customer", please confirm that this is based on comparable terms, conditions and quantities.

Commonwealth response:

Confirmed.

51, Limitation of Liability: In regards to (b) Can the Commonwealth replace the "willful" misconduct with "gross" ?

In regards to (c) Our firm asks that the word "reimbursement" be removed from the sentence. As drafted, this could be opened up to interpretation beyond what both parties intend.

Commonwealth response:

The clause remains as written.

51 Limitation of Liability: If OEM commercial terms do not provide for amounts specified in the first sentence, is VA willing to consider commercial terms or GSA terms?

Commonwealth response:

The clause remains as written.

Questions concerning Desirable Terms & Conditions:

60 Scope of Agreement: End of first sub-paragraph states "2001". Please confirm that "2003" is intended.

Commonwealth response:

Confirmed. SEE AMENDMENT #1.

66 Contract Documents: Is intellectual property developed in whole by the OEM exempt from this provision?

Commonwealth response:

The clause is in the section of Desirable Terms and Conditions, therefore the clause may be amended during negotiations.

66, Contract Documents - Can this be re-drafted to match Section 1.16 as we feel that this paragraph contradicts Section 1.16?

Commonwealth response:

The clause is in the section of Desirable Terms and Conditions, therefore the clause may be amended during negotiations. However, the intent of the clause is to identify how both parties conduct business after Contract execution. For the Master Agreement to be successful, the Master Agreement needs to be electronically available to a multiple of persons, for ordering, warranties, maintenance. If the Master Agreement cannot be supported by our Web site as an example, then no one will have any information concerning products, availability, ordering, warranties, etc.

67, Expanded Response Times - Please expand upon what the Commonwealth means by "response times" in regards to the offerer providing plans and pricing for this.

Commonwealth response:

The clause is in the section of Desirable Terms and Conditions, therefore the clause may be amended during negotiations. As the clause states, "The Commonwealth desires the Contractor to identify other plans and pricing for response times not identified in the Mandatory sections of this RFP...". Response time means the quantity of time between the vendor's receipt of information that a problem exists and the vendor responding in a manner to specifically fix, repair, or otherwise cure the problem.

68, Commonwealth's Right to Modify Software: Our firm's interpretation of the word "**modify**" in this clause would allow the Commonwealth the right to reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the programs exposing our proprietary information. We request that this clause be removed.

Commonwealth response:

The clause is in the section of Desirable Terms and Conditions, therefore the clause may be amended during negotiations.

68 Commonwealth's Right to Modify Software: Please clarify the terms "modify" and "combine".

Commonwealth response:

The clause is in the section of Desirable Terms and Conditions, therefore the clause may be amended during negotiations.